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Letter dated 5 June 2001 from the Permanent Representative of Yugoslavia to the United Nations addressed to the President of the Security Council

The Special Representative of the Secretary-General of the United Nations, Hans Haekkerup, has decided that general elections in Kosovo and Metohija, Federal Republic of Yugoslavia, will be held on 17 November 2001. He also promulgated, on 15 May 2001, the Constitutional Framework for Provisional Self-Government in Kosovo (Constitutional Framework).

The Federal Republic of Yugoslavia supports the process of establishment of provisional institutions of self-government in Kosovo and Metohija, in accordance with Security Council resolution 1244 (1999), and is ready to cooperate fully with the United Nations, the United Nations Interim Administration Mission in Kosovo and the Special Representative of the Secretary-General. At the same time, however, the Government of the Federal Republic of Yugoslavia has the constitutional obligation to protect the territorial integrity and sovereignty of the State, as well as rights of all its citizens. For that reason, it has been compelled to bring to the attention of the Security Council the following serious concerns and reservations with regard to the Constitutional Framework and the holding of general elections in Kosovo and Metohija under present circumstances:

1. In its resolution 1244 (1999), the Security Council unequivocally reaffirmed the commitment of all States Members of the United Nations "to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia and the other States of the region, as set out in the Helsinki Final Act and annex 2" to resolution 1244 (1999). Annex 2 defines the principles to move towards resolution of the Kosovo crisis, one of which is a "political process towards the establishment of an interim political framework agreement providing for substantial self-government in Kosovo, *taking full account of* the Rambouillet accords and *the principles of sovereignty and territorial integrity of the Federal Republic of Yugoslavia* and the other countries in the region ..." (emphasis added).

This statement reflects a fundamental principle of international law according to which all States and international organizations, such as the United Nations, shall respect the territorial integrity and sovereignty of any State. This principle also binds the Special Representative of the Secretary-General. However, certain elements of the Constitutional Framework for Kosovo and Metohija disregard this principle and resolution 1244 (1999), in particular the following:

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1.1 There is no express reference to the fact that Kosovo and Metohija is a part of the Federal Republic of Yugoslavia and the Republic of Serbia, which is an unacceptable omission.

1.2 The use of the term "constitutional" in the title implies that the document is a constitution of a State, which it is not and cannot be.

1.3 There are a number of references to "the people of Kosovo" (e.g., preamble; article 1.1; article 9.2.1). Any such reference cannot bear or imply any connection with the notion of "peoples" or the principle of "equal rights and self-determination of peoples" contained in the Charter of the United Nations or, for example, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) (1970)).

1.4 The provisions on the President of Kosovo and Metohija and his/her responsibilities "in the field of external relations", as well as provisions concerning certain responsibilities of provisional institutions in this field, are contrary to the letter and the spirit of resolution 1244 (1999). As a part of the Federal Republic of Yugoslavia and the Republic of Serbia, Kosovo and Metohija is represented in international relations by the Government of the Federal Republic of Yugoslavia or, to the extent allowed under resolution 1244 (1999), by the Special Representative of the Secretary-General.

1.5 Future political settlement for Kosovo and Metohija must take full account of the sovereignty and territorial integrity of Yugoslavia, as provided by resolution 1244 (1999). Therefore, the reference to "the will of the people" in the preamble to the Constitutional Framework has to be interpreted without prejudice to the respect for the principle of sovereignty and territorial integrity. Furthermore, any such reference should be understood as to include the will of all citizens of Serbia and Yugoslavia, expressed directly or through their elected representatives.

2. The Constitutional Framework does not contain sufficient institutional guarantees for the protection of rights and interests of national communities in Kosovo and Metohija. This is a matter of serious concern, particularly having in mind the present precarious position of members of non-Albanian communities in Kosovo and Metohija. The Federal Republic of Yugoslavia expects that the Special Representative of the Secretary-General will carefully scrutinize work of provisional institutions of self-government and forcefully use authority "to intervene as necessary in the exercise of self-government for the purpose of protecting rights of Communities and their members" (article 4.6 of the Constitutional Framework).

3. It is premature to transfer responsibilities in the field of judicial affairs to provisional institutions of self-government, as provided in article 5.3 of the Constitutional Framework. Unfortunately, conditions for the functioning of a truly independent and impartial judiciary still do not exist in Kosovo and Metohija, and therefore judicial affairs as such should have remained within the reserved powers of the Special Representative of the Secretary-General.

4. Any reference to the Kosovo Protection Corps in the Constitutional Framework is unacceptable. It is alarming that the process of demilitarization of the "KLA", as required by paragraph 9 (b) of resolution 1244 (1999), has not been fully

accomplished. Recent terrorist acts in Kosovo and Metohija have been a grim reminder of the pressing need for an immediate and full completion of this process.

With regard to the holding of general elections in Kosovo and Metohija, announced for 17 November 2001, the Federal Republic of Yugoslavia would like to emphasize that it supports the elections in principle, provided that necessary conditions for the holding of truly all-inclusive, free and fair elections exist well before the election date. It is particularly important to create a safe and secure environment and freedom of movement for all in Kosovo and Metohija, ensure the process of return of refugees and displaced persons and determine the fate of kidnapped and missing persons. Truly democratic elections can only be held in a free, open and safe environment for all in Kosovo and Metohija, including members of all national communities.

The Federal Republic of Yugoslavia welcomes the commitment of the Special Representative of the Secretary-General to facilitating the safe return of refugees and displaced persons to their homes and their exercise of the right to recover their property and possessions, as well as the commitment to creating conditions for freedom of movement for all persons, as declared in the Preamble of the Constitutional Framework. It is of utmost importance that the Special Representative ensures that this commitment is implemented in full and without delay.

At the same time, the Federal Republic of Yugoslavia expects the Security Council to ensure, in accordance with the Council's principal responsibility for the implementation of resolution 1244 (1999), that all its provisions are fully respected.

I should be grateful if this letter would be circulated as a document of the Security Council.

(*Signed*) Dejan **Sahovic**
Ambassador
Permanent Representative